

Before the  
Federal Communications Commission  
Washington, D.C. 20554

AUG 12 2002

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
FM Table of Allotments, ) MM Docket No. 02-25  
FM Broadcast Stations. ) RM-10361  
(Beverly Hills and Spring Hill, Florida) )  
 )

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: July 24, 2002**

**Released: August 2, 2002**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a *Notice of Proposed Rule Making*<sup>1</sup>, issued at the request of WGUL-FM, Inc. ("petitioner"), licensee of Station WGUL-FM, Beverly Hills, Florida, requesting the reallocation of Channel 292C3 from Beverly Hills to Spring Hill, Florida, and the modification of its license for Station WGUL-FM to reflect the change of community. Petitioner filed comments restating its interest in the reallocation and its intention to file the necessary applications to effectuate the change, if granted.

2. This proposal was filed pursuant to Section 1.420(i) of the Commission's Rules that authorizes the Commission to modify the license or permit of an FM station to specify a new community of license where the amended allotment would be mutually exclusive with the station's present allotment. In considering a reallocation proposal, we compare the existing allotment with the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based on the FM Allotment priorities.<sup>2</sup>

3. In support of its proposal, petitioner states that its proposal will result in a preferential arrangement of allotments because it will provide a first local aural transmission service to Spring Hill without depriving Beverly Hills of local aural transmission service. Petitioner states that Station WINV(AM) filed a license to cover construction with the Commission, finalizing its change of community of license from Inverness to Beverly Hills.<sup>3</sup> Petitioner further states that the community of Spring Hill, population 69,078 persons, has sufficient indicia of community status to qualify as a

<sup>1</sup> *Beverly Hills and Spring Hill, Florida (Notice of Proposed Rulemaking)*, 17 FCC Rcd 2322 (MB, 2002).

<sup>2</sup> The FM Allotment priorities are (1) first full-time aural service; (2) second full-time aural service; (3) first local service; (4) other public interest matters. [co-equal weight is given to priorities (2) and (3)]. See *Revision of FM Assignment Policies and Procedures (Second Report and Order in BC Docket No. 80-130)*, 90 FCC 2d 88, 91 (1988).

<sup>3</sup> File No. BL-20020306ABS granted on June 20, 2002.

community for allotment purposes. It is not incorporated but is a Census Designated Place. It does not have elected officers, but has a Civic Association. It publishes a newsletter and has numerous social clubs and businesses that are directly associated with the community by using the name, "Spring Hill" in their titles.<sup>4</sup> It also states that there are two major retirement communities in Spring Hill, Windward Village and Wellington at Seven Hills.

4. We will grant the change of community. As a preliminary matter, although we acknowledge that there are concerns regarding loss of service to the community of Beverly Hills, we believe that the change of community will serve the public interest as a preferential arrangement of allotments. Under priority three of the FM Allotment priorities, the reallocation of Channel 292C3 to Spring Hill, as the community's first local transmission service, would be preferred to the retention of the channel at Beverly Hills, which would serve priority four, because Beverly Hills has another local aural transmission service, Station WINV(AM).<sup>5</sup>

5. We have determined that Spring Hill is a community for allotment purposes. Although it is unincorporated, it is a Census Designated Place in the U.S. Census, with a 2000 population of 69,078 persons. Further, while most of its public services are supplied by Hernando County, it comprises the vast majority of that county's population and has numerous retail establishments, churches, restaurants and medical clinics. Although its Urbanized Area designation changed in the 2000 census,<sup>6</sup> this case does not present an issue of a move-in to an urbanized area because Station WGUL-FM already serves over 50% of the urbanized area of which Spring Hill is a part.<sup>7</sup>

6. With respect to the relative population gains and losses, we believe that overall there is a public interest benefit from the change of community, because there will be a net gain in service of 25,605 persons with a net loss of 796 square kilometers in land area served. In addition, all of the persons in the loss area will continue to receive at least 5 reception services. We believe that there is adequate justification for a finding that the change of community is in the public interest.

7. Channel 292C3 can be allotted at Spring Hill at a site 12.0 kilometers (7.5 miles) northwest of the community.<sup>8</sup>

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<sup>4</sup> Petitioner lists the following groups: Spring Hill Art League, Spring Hill Aglow, Spring Hill Music Club, S-H Camera Club, Spring Hill Duplicate Bridge Club, Spring Hill Fishing Club, Spring Hill Cruisers, Spring Hill Card Club, and Spring Hill Garden Club. It also submits a phone directory listing numerous businesses.

<sup>5</sup> See *Fredericksburg, Helotes and Carsonville, Texas* (Report and Order in MM Docket No. 94-125), 10 FCC Rcd 6580 (MMB 1995) *recon. granted*, 11 FCC Rcd 10516 (1996); *Mullins and Briarcliff Acres, South Carolina* (Report and Order in MM Docket No. 97-72), 14 FCC Rcd 10516 (MMB 1999).

<sup>6</sup> Spring Hill was an Urbanized Area in the 1990 Census. Station WGUL-FM previously covered over 60% of the Spring Hill Urbanized Area. At the time of the filing of this petition, the 2000 Census had not been finalized, but it has now been made final. Based on the 2000 Census, Station WGUL-FM now covers 73.5% of the Brooksville, Florida, Urbanized Area, and after the grant of this proposal will cover 99.6% of the Brooksville Urbanized Area.

<sup>7</sup> See *St. Maries, Idaho, et al.* (Report and Order in MM Docket 96-249), 14 FCC Rcd 17012, 17019 (MMB, 1999); *Headland, Alabama and Chattahoochee, Florida* (Report and Order in MM Docket No. 91-25), 10 FCC Rcd 10352 (MMB 1995).

<sup>8</sup> The coordinates for Channel 292C3 at Spring Hill are NL 28-36-00 and WL 82-33-45.

8. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g), and (r), and 307(b) of the Communications Act of 1934, as amended, and 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED That effective September 16, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Beverly Hills, Florida	---
Spring Hill, Florida	292C3

9. IT IS ORDERED That the Secretary of the Commission shall send by Certified Mail Return Receipt Requested, a copy of this *Order* to the following:

10. IT IS FURTHER ORDERED That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of WGUL-FM, Inc. for Station WGUL-FM IS MODIFIED to specify operation on Channel 292C3 at Spring Hill, Florida, subject to the following conditions:

- a) Within 90 days of the effective date of this *Order*, each licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

11. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change in community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, WGUL-FM, Inc. is required to submit rule making fees in addition to the fees required for the applications to effectuate the changes of community from Beverly Hills to Spring Hill, Florida.

12. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

13. For further information concerning this proceeding, contact Victoria M. McCauley, Media Bureau at (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau